

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATHEW DOUGLAS HARNEY,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Defendant.

Case No. [14-cv-01729-JD](#)

**ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE**

INTRODUCTION

Pro se plaintiff Matthew Douglas Harney filed a Complaint for Judicial Review of Decision of Commission of Social Security on April 15, 2014. *See* Dkt. No. 1. Defendant Carolyn W. Colvin, Commission of Social Security, filed a Motion to Dismiss plaintiff's complaint on August 5, 2014. Dkt. No. 8. Mr. Harney's response to the motion was due on August 19, 2014. Dkt. No. 8. Mr. Harney did not file a response. The Court issued an Order to Show Cause why the Motion to Dismiss should not be granted. Dkt. No. 11. The Order to Show Cause required Mr. Harney to respond by September 24, 2014, and stated that his failure to respond could result in this case being dismissed for failure to prosecute. *Id.* Mr. Harney did not respond to the Order to Show Cause. The Court therefore dismisses the action with prejudice for failure to prosecute.

DISCUSSION

Federal Rule of Civil Procedure 41(b) provides the Court with authority to dismiss a case for failure to comply with any of its orders. Fed. R. Civ. P. 41(b); *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). "In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public's

1 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the
 2 risk of prejudice to the defendants/respondents; (4) the availability of less drastic alternatives; and
 3 (5) the public policy favoring disposition of cases on their merits." *See Espinosa v. Washington*
 4 *Mut. Bank*, No. C 10-04464 SBA, 2011 WL 334209, at *1 (N.D. Cal. Jan. 31, 2011) (citing
 5 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002)).

6 These factors weigh in favor of dismissal. Mr. Harney did not respond to Ms. Colvin's
 7 Motion to Dismiss and failed to respond to the Court's Order to Show Cause. With respect to the
 8 first factor, "[t]he public's interest in expeditious resolution of litigation always favors dismissal."
 9 *Id.* (citing *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). For the second factor, the
 10 Court must be able to manage its docket "without being subject to routine noncompliance of
 11 litigants." *Pagtalunan*, 291 F.3d at 642; *see also Ferdik*, 963 F.2d at 1261 (discussing that non-
 12 compliance with a court's order diverts "valuable time that [the court] could have devoted to other
 13 major and serious criminal and civil cases on its docket."). For the third factor, having failed to
 14 respond to the Motion to Dismiss and this Court's Order to Show Cause, Mr. Harney has offered
 15 no explanation for his failure. This weighs strongly in favor of dismissal. *See Espinosa*, 2011 WL
 16 334209, at *2. With respect to the fourth factor, the Court gave Mr. Harney an opportunity to
 17 show why the Motion to Dismiss should not be granted. *See* Dkt. No. 1. This is sufficient to
 18 satisfy the consideration of less drastic sanctions requirement. *See Ferdik*, 963 F.2d at 1262.
 19 Although the fifth factor -- the public policy favoring disposition of cases on their merits -- might
 20 weigh against dismissal on its own, the cumulative weight of the other factors overrides it. *See*
 21 *Pagtalunan*, 291 F.3d at 643 (finding district court did not abuse its discretion in dismissing case
 22 where three of the five factors weighed in favor of dismissal).


23 CONCLUSION

24 Because Mr. Harney was notified that his failure to show cause why the Motion to Dismiss
 25 should not be granted would lead to dismissal of this case with prejudice for failure to prosecute,
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1 and he failed to show cause within the time period allowed by the Court, the case is dismissed
2 with prejudice under Federal Rule of Civil Procedure 41(b).

3 **IT IS SO ORDERED.**

4 Dated: October 3, 2014

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7 JAMES DONATO
8 United States District Judge
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United States District Court
Northern District of California

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 10/6/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mathew Douglas Harney
290 Divisadero Street
San Francisco, ca 94117

Dated: 10/6/2014

Richard W. Wieking
Clerk, United States District Court

By: Lisa R. Clark
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO

United States District Court
Northern District of California